No. [redacted] 10

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

UNITED STATES OF AMERICA,
Petitioner,

v.

ETHEL MAE YAZELL,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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No. 575

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ETHEL MAE YAZELL,
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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent opposes issuance of a writ of certiorari in this case for the reason that the record herein neither supports nor justifies review by this Court under the standards ordinarily applied in granting or denying such writ.

Statement

The decision of the court of appeals sought to be reviewed herein is one affirming the district court judgment for respondent (petition for writ, App. 13). Although not reported, the district court's judgment and the order granting same are shown in the Appendix hereto.

Reasons For Denying The Writ

I.

Both questions presented for review by the petition are purely academic when the case record before the Court herein is considered.

A. Petitioner's first question inquires whether state or federal law is applicable in this case. This question assumes two unsupported and, therefore, irrelevant facts, the first of which is that the district court's summary judgment was granted "under Texas law".

(1) The record shows, however, that neither the district court's summary judgment (App. p. 10) nor its order granting the same (App. p. 12) mentions Texas law. For ought that appears from the face of the summary judgment or order granting the same, the district court applied federal law herein. The rule in question was applied as the appropriate federal rule, as shown by the following: the Act of Congress, the Regulations promulgated by the Administrator of Small Business Administration pursuant to such Act, and the contract documents in this particular case, separately and collectively, conclusively establish that the coverture law applied in this case was applied as a rule of federal law controlling this case. In other words, the parties contracted in reference to Texas law insofar as the validity of the note and chattel mortgage were concerned (validity as distinguished from remedy.)

(a) The Small Business Administration is the successor to Reconstruction Finance Cor-

poration. The statute, known as The Small Business Act of 1953, as amended, (67 Stat. 232, 15 U.S.C. 631 et seq) contains no provision concerning legal competency of the borrower other than that it be a small business concern as defined in Section 632, or concerning the form or substance of the security instruments evidencing loans to be made by it, such as this one, other than to prescribe a maximum interest rate and repayment period, and that [Section 636 (a) (7)] "* * * all loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment." There is nothing in the Act expressly or impliedly exempting security instruments to be taken by Small Business Administration from the requirements of the local property laws (in effect where the loan is made) governing validity thereof exactly as required of all other lenders. *Bumb, Trustee v. United States*, 276 F. 2d 729 (9th Circuit, 1960). The foregoing are the sole and only directions of the Congress respecting legal competency of the borrower, or the form and substance of the security instruments evidencing loans to be made by Small Business Administration, despite the well-known fact that there is no other body of federal law, legislative or otherwise, prescribing form or substance of notes and chattel mortgages, or legal competency of borrowers. This silence by Congress, in the face of the then existing fact of total absence of a body of federal law prescribing form, substance and legal competency, compels the conclusion that Congress intended that Small Business Administration contracts should be made in reference to local law as to these

matters. No one seriously suggests that Congress placed Small Business Administration in business with inadequate tools to perform its functions.

(b) The Administrator of Small Business Administration reached the same conclusion expressed above as evidenced by the Regulations promulgated pursuant to the Act [15 U.S.C.A., Section 634 (b) (6)]. Regulation 122.17 (f) reads as follows:

> "(f) Security may include: Mortgage on land, buildings and equipment; assignment of warehouse receipts for marketable merchandise stored in satisfactory warehouses; mortgage on chattels; or assignment of current receivables (accounts, notes or trade acceptances). The applicant may offer as additional collateral any other assets of sound value. A pledge of inventories generally will not be regarded as satisfactory collateral unless stored in a bonded or otherwise acceptable warehouse, *or unless the applicable State law provides for creating and maintaining a satisfactory lien upon inventory not so warehoused.*" (Emphasis supplied).

Regulation 123.7 (a) in reference to disaster loans reads as follows:

> "(a) The Small Business Act, as amended, contains no specific requirements with respect to collateral as security for a disaster loan, nor has SBA established any firm rule in regard to collateral. However, SBA requires applicants to pledge whatever collateral they can furnish. SBA will give consideration to the moral risk involved and to evidence showing a reasonable prospect that the loan will be repaid."

Small Business Administration has, from the beginning, just as Reconstruction Finance Corporation did before it, looked to the local law of each community in which it operated to provide the rules governing the validity of its security instruments, and the general legal competency of its borrowers. The aforesaid Regulations are conclusive of this statement. Small Business Administration's use, as federal law, of the established local laws concerning the form and substance of security instruments and legal competency of borrowers, was not only reasonable and appropriate, but in the absence of any other federal rules thereon, it was absolutely necessary to any organized and orderly discharge of its statutory duties.

(c) Thus, in this very case, the chattel mortgage complied with the law of the State of Texas as to substance and form. It was acknowledged before a Notary Public by respondent as a married woman in full compliance with Texas law. By express language, the chattel mortgage was executed in reference to Art. No. 4000, Revised Civil Statutes of Texas, as amended, and thereby expressly authorized respondent's husband to sell and convey the merchandise daily exposed for sale in the retail trade, and otherwise relied upon the Texas law in reference to maintenance of the stock of merchandise. This chattel mortgage was a part of the contract which included the promissory note made the basis of this suit. Thus, it appears that petitioner specifically in this case, as well as generally in such matters adopted local law and used it as a part of the terms of the federal contract.

(2) If respondent is mistaken in her assertion that the local laws with respect to form, substance and competency were adopted by Congress, by the Administrator of Small Business Administration, and by the parties to the contract in this case, the district court nevertheless applied federal rules in its decision herein on authority of *Clearfield Trust Co. v. United States*, 318 U.S. 363, 63 S. Ct. (1943) where this Court held that "in absence of an applicable Act of Congress it is for the federal courts to fashion the governing rule of law according to their own standards * * * In our choice of the applicable federal rule we have occasionally selected state law."

(3) All of the foregoing emphasizes petitioner's second fallacious assumption, i.e., that there is a conflict between state and federal rules to be applied in this case. The alleged conflict is not identified in the petition. We submit that no such conflict exists because the one available, appropriate set of rules pertaining to legal competency and the form and substance of the security instruments has always been used by Small Business Administration, this being the set of rules of which a part was applied by the district court in this case.

The academic nature of the review sought by petitioner herein is clearly illustrated by two erroneous statements or reasons given by petitioner for granting the writ herein. There are no "standard agreements pursuant to * * *" the various lending programs of the federal government, not even of the Small Business Administration. There are none, the record does not show any, and the suggestion that there are any such standard agree-

ments is without foundation and should be ignored. Neither is there any foundation in the record of this case or otherwise for petitioner's suggestion that use of local rules as to form and substance of security instruments and legal competency of borrowers deprive some persons of "* * * the privilege of participation on an equal basis" in the lending program of the Small Business Administration. Aside from the fact that this statement is unsupported in this record, we believe it impossible for petitioner to state any reasonable hypothetical application of local rules so as to reflect any discrimination. It is to be noted in this case that petitioner's judgment against respondent's husband gave it all the relief to which it was entitled against the mortgaged property or as a general obligation against any property to be acquired by the community estate of respondent and her husband.

B. Petitioner's second question inquiring whether, if federal law governs, the federal courts should fashion a uniform rule rather than adopt the diverse rules of coverture followed in the several States, assumes that neither the Congress nor the Small Business Administration has adopted the rules applicable to this case; that such rules are non-existent and that, therefore, an appropriate rule must be fashioned by the federal courts according to their own standards. This discretion is generally exercised only "in the absence of an applicable Act of Congress". Here we have the intent of Congress to use as the appropriate law the local rules of the several States concerning the form and substance of security instruments of Small Business Administration and the legal competency of its bor-

rowers. These rules have been adopted and are being used by Small Business Administration by Regulations thought to be binding on it as well as others until duly modified by the Administrator. Finally, such local rules were made a part of the contract in question by the parties thereto which included petitioner and respondent. What we have previously said regarding the academic nature of petitioner's first question applies with equal force to its second question.

C. As the record in this case does not raise either of petitioner's questions, it is clear that they are of an academic and speculative nature only, and that there are no special and important reasons for granting the writ herein.

II.

There is no direct conflict between the decision in this case and the decision in *United States v. Helz*, 314 F. 2d 301, Sixth Circuit. The statutes, Regulations and contracts were entirely different in the two cases. *Helz* involved the Federal Housing Act, whereas the instant case involves the Small Business Act of 1953. Any apparent conflict between the two decisions is not apt to have any continuing future consequences for the reason that Small Business Administration necessarily must continue to rely upon local property laws if it is to function from now until such future date as Congress may see fit to adopt at one time an entire body of property law for use by Small Business Administration. It appears that Small Business Administration (and any other federal lending agencies so situated must either make use of the systems of local property laws of the several States in which it

operates, or it must cease functioning until Congress provides a substitute system for its guidance and control. The mere suggestion demonstrates the impracticality of petitioner's posture in this case.

III.

No constitutional questions are involved in this case. Petitioner's asserted questions for decision are not raised by the record, hence consideration thereof by this Court will necessarily be in the abstract. It seems to use that granting the writ in this case will serve no purpose other than perhaps to satisfy a philosophical urge to debate the wisdom of Congress and of the Administrator of Small Business Administration in adopting local property rules respecting form and substance of its security instruments, and the legal competency of those to whom it lends.

Conclusion

Respondent submits that under the standards usually applied by this Court the petition for a writ of certiorari in this case should be denied.

Respectfully,

J. V. HAMMETT
P. O. Box 111
Lampasas, Texas
Attorney for Respondent

APPENDIX

* * *

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA VS. DELBERT L. YAZELL, d/b/a YAZELL'S LITTLE AGES, and ETHEL MAE YAZELL	CIVIL ACTION No. 1319

Summary Judgment

The Motion for Summary Judgment filed herein by the Plaintiff, United States of America, and the Defendant, Ethel Mae Yazell, having been presented, and the Court being fully advised.

The Court finds that the Plaintiff, United States of America, is entitled to summary judgment against the Defendant, Delbert L. Yazell, doing business as Yazell's Little Ages, as a matter of law.

The Court finds that the Defendant, Ethel Mae Yazell, based upon her defense of Coverture, is entitled to a summary judgment as a matter of law.

It is therefore ORDERED, ADJUDGED and DECREED that the Plaintiff's Motion for Summary

Judgment against the Defendant, Delbert L. Yazell, doing business as Yazell's Little Ages, be and the same hereby is granted, and the Plaintiff is granted judgment against Defendant, Delbert L. Yazell, for the sum of Four Thousand Seven Hundred Nineteen and 66/100 Dollars ($4,719.66) with interest at the rate of three per cent per annum from August 27th, 1962 until the date of entry of this judgment and with interest at the rate of six per cent per annum thereafter until paid.

It is further ORDERED, ADJUDGED and DECREED that the Defendant, Ethel Mae Yazell's Motion for Summary Judgment be, and the same hereby is granted, that the Plaintiff, United States of America, have and recover nothing against defendant, Ethel Mae Yazell, and that the defendant, Ethel Mae Yazell go hence without day.

SIGNED this 15 day of August, 1963.

/s/ Ben H. Rice, Jr.
UNITED STATES DISTRICT JUDGE.

ENTERED: Civil 5 Page 843

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA *Plaintiff* v. Delbert L. Yazell, d/b/a YAZELL'S LITTLE AGES, and Ethel Mae Yazell *Defendant*	CIVIL ACTION No. 1319

Order Granting Motion For Summary Judgment of Defendant Ethel Mae Yazell

Came on to be considered the motion for summary judgment filed herein by the defendant, Ethel Mae Yazell, and the Court having considered said motion and the briefs of the parties thereon, is of the opinion that said defendant's plea of coverture herein should be sustained and that judgment should be entered in favor of the said Mae Yazell.

IT IS, THEREFORE ORDERED that Ethel Mae Yazell's motion for summary judgment herein be, and the same is hereby, granted.

It is further ORDERED by the Court that the plea of set-off filed by Delbert L. Yazell be in all things stricken and that the United States is entitled to recover its Judgment against the said Del-

bert L. Yazell for the amount sued for; Plaintiff's attorneys are requested to submit appropriate Judgment to this Court, that is take nothing against Ethel Mae Yazell, and recover in full on its claim against Delbert L. Yazell, furnishing copy thereof to defendants' attorney.

Done this 6th day of August, 1963.

/s/ Ben H. Rice, Jr.
United States District Judge

ENTERED: Civil 5 Page 634